

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

HEATHER SMITH, individually and )  
on behalf of all others similarly )  
situated, )  
  )  
Plaintiff,                         )  
  ) Case No. CIV-23-559-D  
vs.                                  )  
  )  
WHALECO, INC. d/b/a TEMU,      )  
  )  
Defendant.                         )

**ORDER GRANTING DEFENDANT LEAVE TO  
RESUBMIT ITS MOTION TO COMPEL ARBITRATION**

Before the Court is Defendant's Request for Leave to Resubmit Its Motion to Compel Arbitration [Doc. No. 29]. Defendant asks to withdraw its pending Motion to Compel Arbitration, which was filed July 10, 2023, and to file a revised motion that would correct errors and add information that was recently discovered.

Plaintiff opposes Defendant's request on the grounds that Defendant is engaging in gamesmanship and attempting to cure deficiencies in its pending motion based on an adverse legal ruling in another case. Plaintiff notes that she responded to the motion on September 28, 2023, and it would be ripe for decision if Defendant had not obtained two extensions of time to file its reply. Plaintiff relies on case law that discourages successive motions to compel arbitration and "a second bite at the apple." See Pl.'s Resp. Br. at 2-3.

Upon consideration, the Court finds that the better course under the circumstances is to allow Defendant to withdraw its arbitration motion and file an amended one.

Assuming there are errors and omissions in the pending motion – which Plaintiff does not dispute – justice is served by allowing Defendant to correct erroneous information and provide additional materials that will enable the Court to make a fully informed decision regarding whether an arbitration agreement exists. Plaintiff is understandably frustrated by Defendant's change of course after she invested time and resources in preparing a response to the pending motion. However, the Court finds no evidence of improper motive in Defendant's request to correct and expand the record.

**IT IS THEREFORE ORDERED** that Defendant's Motion for Leave to Resubmit Its Motion to Compel Arbitration [Doc. No. 29] is **GRANTED**. Defendant's Motion to Compel Arbitration and to Stay This Action [Doc. No. 10] is **WITHDRAWN** and will not be considered. Defendant shall file a new motion to compel arbitration within 7 days from the date of this Order.

**IT IS SO ORDERED** this 8<sup>th</sup> day of November, 2023.



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TIMOTHY D. DeGIUSTI  
Chief United States District Judge